

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 6839

IN THE MATTER OF:

Served October 3, 2002

Application of ASSOCIATED )  
COMMUNITY SERVICES, INC., for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2002-88

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed. Applicant proposes operating six vans under various contracts with the District of Columbia's Department of Health.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant filed a balance sheet as of March 31, 2002, showing assets of \$968,422; liabilities of \$537,816; and equity of \$430,606. Applicant's projected operating statement for the first twelve months of WMATC operations shows total revenue of \$2,381,868 and total expense of \$2,381,868.

Applicant certifies it has access to, is familiar with, and will comply with the Compact and the Commission's rules and regulations thereunder. Normally, that averment would suffice to establish applicant's regulatory compliance fitness, but applicant has a history of noncompliance.

Applicant was granted operating authority in 2001, and the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents.<sup>1</sup> Applicant failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval.<sup>2</sup> In the meantime, applicant placed removable signs on its vehicles indicating that applicant was operating those vehicles under WMATC authority.

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<sup>1</sup> See In re Associated Community Servs., Inc., No. AP-01-51, Order No. 6320 (Aug. 21, 2001).

<sup>2</sup> See id. (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

A non-WMATC carrier may not, by advertisement or otherwise, hold itself out as authorized to provide services requiring a WMATC certificate of authority.<sup>3</sup> This prohibition is in Commission Regulation No. 63-04(a), which provides that no carrier "regulated by the Commission or subject to such regulation shall advertise or hold itself out to perform transportation or transportation-related services within the Metropolitan District unless such transportation or transportation-related services are authorized by the Commission." Displaying an unauthorized WMATC carrier number thus violates Regulation No. 63-04(a).<sup>4</sup>

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>5</sup>

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>6</sup> The term "willfully" does not mean with evil purpose or criminal intent; rather, it describes conduct marked by careless disregard whether or not one has the right so to act.<sup>7</sup> Once a carrier is apprised of Compact requirements, the onus is on the carrier to determine whether its operations are in compliance.<sup>8</sup> Violations occurring thereafter are viewed as knowing and willful.<sup>9</sup>

Applicant's explanation of its failure to remove the signs once the application was deemed denied is not that applicant was unaware it was not authorized to display WMATC No. 626 on its vehicles but merely that the failure was "not intentional but an oversight." Employee negligence is no defense to a charge of knowingly and willfully violating a Commission regulation.<sup>10</sup> "To hold carriers not liable for penalties where the violations . . . are due to mere indifference, inadvertence, or negligence of employees would defeat the purpose of"

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<sup>3</sup> See In re Title II, Art. XII, § 1(c) of the Compact, No. MP-83-01, Order No. 2407 (Apr. 20, 1983) (neither taxicab nor limousine operators may hold themselves out to the public to provide regular guided tours requiring WMATC certificate, by advertisement or otherwise).

<sup>4</sup> See In re Global Express Limo. Serv., Inc., No. AP-02-32, Order No. 6772 (Aug. 13, 2002) (non-WMATC carrier's advertisement of WMATC-regulated service violates Reg. 63-04); In re BMG Limo. and Jet Serv., LLC, & OAO Corp., t/a BMG Limo. Serv., No. AP-02-53, Order No. 6760 (Aug. 5, 2002) (same).

<sup>5</sup> Compact, tit. II, art. XIII, § 6(f)(i).

<sup>6</sup> Order No. 6772; Order No. 6760; In re Megaheds, Inc., t/a Megaheds Transp., No. AP-97-24, Order No. 5113 (June 26, 1997).

<sup>7</sup> Order No. 6772; Order No. 6760; Order No. 5113.

<sup>8</sup> Order No. 6772; Order No. 5113.

<sup>9</sup> Order No. 6772; Order No. 5113.

<sup>10</sup> Order No. 6772; Order No. 6760.

the Act.<sup>11</sup> We will assess a forfeiture of \$250 against applicant for knowingly and willfully violating Regulation No. 63-04.<sup>12</sup>

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>13</sup>

Applicant has removed the unlawful signs from its vehicles and turned them over to the Commission. Upon payment of the forfeiture assessed herein, applicant's correction of past errors will be complete<sup>14</sup> and the record will support a finding of prospective compliance fitness.<sup>15</sup>

Based on the evidence in this record, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission, subject to applicant paying the assessed forfeiture in timely fashion.

THEREFORE, IT IS ORDERED:

1. That the Commission hereby assesses a civil forfeiture against Associated Community Services, Inc., in the amount of \$250 for knowingly and willfully violating Commission Regulation No. 63-04.

2. That Associated Community Services, Inc., is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

3. That Certificate of Authority No. 626 shall be issued to Associated Community Services, Inc., 78 Ritchie Road, Capitol Heights, MD 20743, upon applicant's timely payment of the forfeiture herein assessed and compliance with the following filing requirements.

4. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations;

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<sup>11</sup> In re Junior's Enterprises, Inc., No. MP-01-103, Order No. 6549 (Feb. 21, 2002) (quoting United States v. Illinois Cent. R.R., 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938)).

<sup>12</sup> See Order No. 6772; Order No. 6760 (same).

<sup>13</sup> Order No. 6772; Order No. 6760; Order No. 5113.

<sup>14</sup> Order No. 5113.

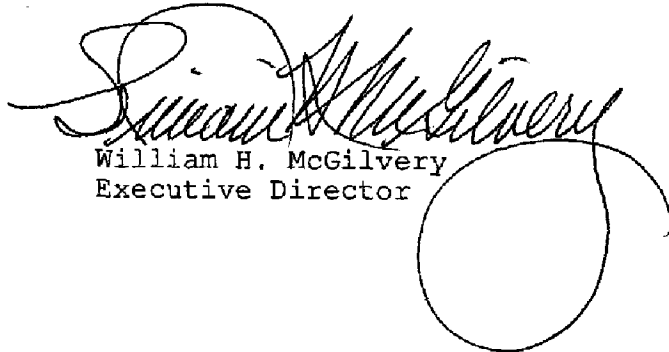
<sup>15</sup> Order No. 5113.

(d) a copy of the vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with this order.

6. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely satisfy the conditions of issuance prescribed herein.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND MILLER:

  
William H. McGilvery  
Executive Director